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March 17, 1997

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Mr. William F. Caton, Acting Secretary		Transa & September 1999
Federal Communications Commission		MAR 1 7 1997
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Washington DC 20554		Fodency (m. 124 marsh 127 marsh 128
In the Matter of:		
Implementation of the Local Competition)	
Provisions in the Telecommunications Act)	
of 1996)	
)	CC Docket No. 96-115
Telecommunications Carriers' Use of)	
Customer Proprietary Network Information)	
and Other Customer Information)	
Dear Mr. Caton:		

Enclosed are an original and four (4) copies plus two extra public copies of the Cincinnati

Bell Telephone Companys' Further Comments in the above referenced proceeding. A duplicate original copy of this letter and attached Further Comments is also provided. Please date stamp

this as acknowledgment of its receipt and return it. Questions regarding these Comments may be directed to me at the above address or by telephone on (513) 397-1393.

David meis

David L. Meier

Sincerely,

Enclosure

cc: Janice Myles (two paper copies and a disk copy)
ITS (one paper copy and a disk copy)

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Before the FEDERAL COMMUNICATIONS COMMISSION Washington, D.C. 20554

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Implementation of the)	
Telecommunications Act of 1996)	
)	CC Docket No. 96-115
Telecommunications Carriers' Use)	
of Customer Proprietary Network)	
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FURTHER COMMENTS OF CINCINNATI BELL TELEPHONE COMPANY

I. <u>INTRODUCTION</u>

Cincinnati Bell Telephone Company ("CBT"), an independent, mid-size local exchange carrier, submits these further comments in response to the Commission's Public Notice issued February 20, 1997 seeking further comment on specific questions related to the use of customer proprietary network information ("CPNI") under the Telecommunications Act of 1996. Although CBT is limiting its comments to only those questions (questions 3 and 5) which address issues impacting independent local exchange carriers, CBT urges the Commission to consider the expressed needs and desires of consumers in making decisions through this proceeding concerning the use of CPNI.

II. <u>DISCUSSION</u>

A. QUESTION 3

Part 1: If a telecommunications carrier may disclose a customer's CPNI to a third party only pursuant to the customer's "affirmative written request" under section 222(c)(2), must carriers, including interexchange carriers and independent local exchange carriers (LECs) treat their affiliates and other intra-company operating units (such as those that originate interexchange telecommunications services in areas where the carriers provide telephone exchange service and exchange access) as third parties for which customers' affirmative written requests must be secured before CPNI can be disclosed?

CBT believes that LEC affiliates and other intra-company operating units should not be considered third-parties under the Act requiring affirmative written requests from customers before the disclosure of CPNI to such an affiliate or operating unit. On the issue of affiliate sharing, CBT supports the position set forth in the "Analysis of Privacy Issues" prepared by Privacy and Legislative Associates, Inc., ("PLA") submitted by Pacific Telesis in its January 24, 1997 ex parte letter to the Commission in this docket. PLA stated in its analysis:

Public opinion research makes clear that the American public feels comfortable receiving marketing offers from corporate affiliates. In a 1994 survey by Louis Harris and Associates conducted for MasterCard International and Visa U.S.A., with Alan Westin as academic consultant, found that 63 percent of the public feel that it is acceptable for "subsidiaries of the same corporate family" to share customer information "to make offers of services or products."

CBT urges the Commission to recognize that the majority of consumers find the sharing of information with affiliates acceptable.

Pacific Telesis, January 24, 1997 ex parte letter, CC Docket No. 96-115, p 17.

Such a finding would be consistent with prior decisions of the Commission concerning the use of CPNI by affiliates. For example, in the <u>Application of Craig O. McCaw, transferor</u>, and <u>American Telephone and Telegraph</u>, transferee, the Commission found:

Consistent with past precedent, we decline to limit consumer choice and efficiency by barring AT&T from sharing its customer' CPNI, obtained through the provision of long-distance service, with its cellular affiliates or by mandating that AT&T/McCaw share its cellular customers' CPNI with joint petitioners and other competing cellular service providers. ²

The Analysis of Privacy Issues by PLA also cites examples from a variety of industries, such as the credit reporting and health and medical recording industries, in which the sharing of information between affiliates is both allowed and supported.³ Such examples further support a finding by the Commission that sharing CPNI between affiliates is appropriate.

One other important issue concerning the use of CPNI, particularly for small and mid-sized LECs, concerns the concept of regulatory symmetry. The advent of competition in the local exchange market brings a number of new competitors from diverse industries, many of which will be large global competitors such as AT&T and Time Warner. If these large competitors are able to use, within their affiliates, their existing customer information to market new telecommunications services unrestricted by Section 222 of the Act, small and mid-sized LECs will be at a competitive disadvantage and their customers will suffer. Small and mid-sized

Memorandum Opinion and Order on Reconsideration in Re: Application of Craig O. McCaw, transferor, and American Telephone and Telegraph Company, Transferee, For Consent to the Transfer of Control of McCaw Cellular Communications, Inc. and its Subsidiaries, 10 FCC Record Volume No. 22, p 11794.

³ Pacific Telesis letter, p 17-18.

LECs must be allowed flexibility in the marketing of their telecommunications products and services, regardless of corporate structure, in order to compete with these global giants.

CBT does acknowledge, however, that CPNI cannot be shared with affiliates absent 'customer approval', but such customer approval need not be affirmative written approval as required by Section 222(C)(2) as to third parties. As AT&T pointed out in its original comments "Congress obviously intended approval under (c)(1) to be something less than 'affirmative written' approval...."

2. Part 2: Must the answer to this question be the same as the answer to question 2?

Since the requirements of Section 272 do not apply to non-BOC carriers, the Commission may clearly arrive at a different answer to question 3 for independent LECs who are not subject to the BOC-only provisions under section 272.

B. QUESTION 5

If sections 222(c) and 222(c)(2) require customer approval, but not an affirmative written request, before a carrier may use, disclose, or permit access to CPNI, must each carrier, including interexchange carriers and independent LECs, disclose CPNI to unaffiliated entities under the same standard for customer approval as is permitted in connection with their affiliates and other intra-company operating units?

⁴ AT&T Comments, Docket No. 96-115, p 13.

CBT believes that section 222(C)(2) clearly expresses the intent of Congress to require affirmative written customer authorization for the disclosure of CPNI to unaffiliated third parties.⁵ Consistent with the positions already articulated by CBT, this provision should be strictly enforced. Not only does a strict interpretation of this provision comport with Congressional intent, it is also consistent with the desires of CBT customers. As CBT pointed out in its original comments in this proceeding, "... while customers are not overly concerned about the use of CPNI by their telecommunications provider, they are extremely concerned about the release of this information to third parties. "6 In fact, the report summarizing the Aragon Consulting Group study submitted as Appendix A to CBT's original Comments in this proceeding "indicates that almost half the respondents surveyed indicated that they would be extremely concerned about their CPNI being provided to other companies for marketing purposes." Therefore, affirmative written customer authorization should be the standard for customer approval for the release of CPNI to third parties.

III. CONCLUSION

CBT respectfully requests the Commission to consider these comments as it continues to develop regulations and guidelines related to the statutory provisions of the Act concerning the use of CPNI and subscriber list information.

This customer approval requirement need not be used in connection with affiliates and other intra-company operating units because they are not third parties for the purposes of the Act.

⁶ See report summarizing the Aragon Consulting Group study submitted as Appendix A to CBT, s original Comments in this proceeding, as well as CBT Comments, p 9.

⁷ CBT Comments, fn 12.

Respectfully submitted,

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Filed: March 17, 1997

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that copies of the foregoing Further Comments of Cincinnati Bell Telephone Company have been sent by first class United States Mail, postage prepaid, or by hand delivery, on March 17, 1997, to the persons listed on the attached service list.

David L. Meier

via hand delivery

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